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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 Mary Jane Beauregard and John Hugh  
7 Smith,

8 Plaintiffs,

9 v.

10 Clayton Sampson, an individual; Elisha  
11 Sampson, an individual; EnvyTV, LLC, a  
12 Nevada limited liability company; and  
13 EnvySolutions, LLC, a Nevada limited liability  
14 company,

15 Defendants.

Case No. 2:20-cv-02123-KJD-DJA

16 **Order  
17 &  
18 Report and Recommendation**

19 Before the Court is *pro se* Defendants Clayton Sampson and Elisha Sampson's response  
20 to the Court's order to show cause. (ECF No. 58). After Defendants failed to comply with the  
21 Court's order granting Plaintiff's motion to compel discovery responses and directing the parties  
22 to meet and confer regarding attorneys' fees, Plaintiffs moved for case-ending sanctions. (ECF  
23 No. 52). The Court granted the motion in part, directing Defendants to show cause with an  
24 explanation regarding: (1) why they have not provided the discovery responses compelled by the  
25 Court's order at ECF No. 42; (2) why they have not attempted to agree with Plaintiffs on  
26 appropriate attorneys' fees the Court awarded in that order; (3) why the Court should not  
27 recommend case ending sanctions for these violations; and (4) why the Court should not  
28 recommend that default be entered against EnvyTV, LLC<sup>1</sup> for failing to retain counsel. (ECF No.  
56).

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<sup>1</sup> Plaintiffs voluntarily dismissed their claims against EnvySolutions, LLC on January 18, 2021.  
(ECF No. 6).

1 Defendants responded: (1) attaching the compelled discovery responses; (2 and 3)  
2 explaining that their previous counsel told them there was no clause for attorneys' fees in an  
3 agreement between Plaintiffs and Defendants; and (4) that the Court should not enter default  
4 against EnvyTV because it produced the documents and cannot afford counsel. (ECF No. 58).  
5 However, at this stage it is up to Plaintiffs, not this Court to determine whether the attached  
6 discovery responses are sufficient. And discovery responses should not be filed on the docket.  
7 *See* LR 26-7. Instead, discovery responses must be served on the opposing party. Defendants  
8 also seem to conflate attorneys' fees under their agreement with Plaintiffs with those awarded by  
9 the Court in connection with Plaintiffs' motion to compel (ECF No. 42). Under Federal Rule of  
10 Civil Procedure 37(a)(5)(A), the Court must award attorneys' fees incurred in bringing a motion  
11 to compel to the party prevailing in that motion.

12 Because Defendants have ultimately—albeit untimely—produced certain documents and  
13 appear confused on the issue of attorneys' fees, the Court will not recommend case ending  
14 sanctions at this time. Instead, it will order the parties to meet and confer regarding: (1) whether  
15 Defendants' discovery responses attached to their order to show cause are sufficient under the  
16 Court's order granting Plaintiffs' motion to compel (ECF No. 42); and (2) whether the parties can  
17 reach an agreement on attorneys' fees awarded in the Courts' order granting Plaintiffs' motion to  
18 compel (ECF No. 42). Defendants' must fully cooperate in the meet and confer process and are  
19 directed to review Local Rule IA 1-3(f) regarding meet and confer conferences.<sup>2</sup> Following the  
20 meet and confer, the parties are directed to file a joint status report regarding the meet and confer  
21 and its outcome. Finally, because EnvyTV cannot appear in Court unless it is through an  
22 attorney, the Court recommends entering default against it. *See Employee Painters' Trust v.*  
23 *Ethan Enterprises, Inc.*, 480 F.3d 993, 998 (9th Cir. 2007) ("we have recognized default as a  
24 permissible sanction for failure to comply with local rules requiring representation by counsel").  
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27 <sup>2</sup> The Local Rules can be found on the Court's website at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-Amended-2020.pdf>.  
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**ORDER**

**IT IS THEREFORE ORDERED** that the parties must meet and confer regarding the topics outlined in this order and file a joint status report regarding the outcome of that meet and confer on or before **August 18, 2022**.

**RECOMMENDATION**

**IT IS THEREFORE RECOMMENDED** that the Clerk of Court enter default against Defendant EnvyTV, LLC.

**NOTICE**

This report and recommendation is submitted to the United States District Judge assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may file a written objection supported by points and authorities within fourteen days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED: July 19, 2022



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE